CONNECTICUT
VOICES
FOR CHILDREN

Independent research and advocacy to improve the lives of Connecticut's children

Testimony Supporting
Raised H.B. 6399: AAC Children in the Juvenile Justice System

Kenny Feder and Sarah Esty
Children's Committee
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Senator Bartolomeo, Representative Urban, and distinguished members of the Children's Committee:

We are testifying today in support of H.B. 6399, on behalf of Connecticut Voices for Children, a research-based public education and advocacy organization that works statewide to promote the well-being of Connecticut's children, youth, and families.

Connecticut Voices for Children supports HB 6399: *An Act Concerning Children in the Juvenile Justice System* because it will (1) reduce the unnecessary shackling of juveniles, (2) provide credit for time served for youth held in detention awaiting placement, (3) require that a youth's parents be present when questioned by the police for all crimes, and (4) establish a procedure for automatic erasure of juvenile delinquent acts after two years.

1. Shackling

We support Section 1 of HB 6399, which would prohibit the unnecessary use of shackles in juvenile proceedings.

Shackling children at a juvenile hearing, without a finding from a judge that such restraint is necessary for public safety, punishes and humiliates children for crimes for which they have not yet been adjudicated delinquent. Although they are now generally used as a means of restraint to protect public safety, historically, shackles have been used as a form of punishment, and can be degrading to the shackled child.[1] In fact, in the U.S. Supreme Court case *Deck v. Missouri*, the majority found that, unless there exists a particular reason for shackling in adult criminal hearings, shackling 1) undermines the presumption of innocence, 2) diminishes the right to council by making it more difficult for a defendant to communicate with his or her lawyer, and 3) undermines the dignity of the courtroom.[2]

The practice of juvenile shackling is particularly troubling, because substantial evidence from psychological research exists that shackling youth in court is humiliating and leaves the young person feeling as if he or she has been treated like a "dangerous animal."[3] These feelings can persist into

[1] See, Brian Gallagher & John Lore III, "Shackling children in juvenile court: The growing debate, recent trends and the way to protect everyone's interest," *UC Davis Journal of Juvenile Law & Policy*, Summer, 2008. Available at http://jjlp.law.ucdavis.edu/archives/vol-12-no-2/09_Article-Gallagher-Lore.pdf.
[2] See, *Deck v. Missouri*, Opinion of the Court. Available at http://scholar.google.com/scholar_case?case=7408663479458041642&q=deck+v.+missouri&hl=en&as_sdt=2.7&as_vis=1.
[3] See, Affidavit of Dr. Marty Beyer, available through the Miami Public Defender's Office at http://www.pdmiami.com/unchainthechildren/AppendixDBeyer.pdf.

adulthood, and can actually confirm a child's own belief that he or she is a bad person, running counter to a Juvenile court's stated purpose of rehabilitation.[4]

Nothing in the legislation at hand undermines the safety of the courtroom, because shackling of juvenile offenders whom a judge finds to be a threat to public safety would still be permitted. However, rather than burdening the adolescent on trial with the obligation of proving that shackles are not needed, this provision would require a judge to find that shackles are necessary before such restraint is used. This will help to ensure that juvenile defendants are not unnecessarily shackled, humiliated, and prejudiced in legal proceedings, while still protecting the safety of the courtroom.

2. Credit for Time Served

Connecticut Voices for Children supports Section 2 of HB 6399, which would reduce juvenile sentences by the amount of time spent confined to a facility after they are adjudicated but prior to disposition of the case. This provision will ensure that children and adolescents do not face unnecessarily long punishments as a result of Department of Children and Families (DCF) delays in finding suitable placements.

While rehabilitation is an important function of the juvenile justice system, punishment and accountability are defined as its primary functions; more importantly, convicted children view their own sentences as punishment.[5] Counting the time a youth spends confined to a facility prior to placement towards the completion of a sentence ensures that these young people do not face punishments that are longer than a court has found to be necessary. Furthermore, there are factors unrelated to the severity of a delinquent act or the rehabilitative needs of a child that affect the length and appropriateness of a youth's placement. For example, there are far fewer appropriate placements available to young women, forcing them to languish in settings that provide little to no rehabilitative function, and to delaying the time before they can begin serving a sentence. The proposed legislation would help to remedy these gender disparities, by ensuring that girls do not serve artificially long sentences simply because they are hard to place.[6] Finally, counting time spent in confinement prior to disposition does not undercut the rehabilitative function of Juvenile sentences, because DCF retains the option of petitioning for an extended sentence if such an extension is in the child's best interest.[7]

Reducing Juvenile sentences by the amount of time spent confined prior to disposition will ensure that no child is punished beyond what a court dictates is necessary, for factors unrelated to their delinquent act and often as a result of insufficient appropriate placements and backlogs in processing evaluations necessary prior to placement.

3. Parental Presence for Police Questioning

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[4] See, Affidavit of Dr. Marty Beyer, available through the Miami Public Defender's Office at http://www.pdmiami.com/unchainthechildren/AppendixDBeyer.pdf.

[5] See, CGS 46b-121h. See also testimony of Christine Rapillo, Juvenile Public Defender, on Raised Bill 1229, April 2011, available at: http://www.cga.ct.gov/2011/JUDdata/Tmy/2011SB-01229-R000401-Christine%20Perra%20Rapillo,%20Executive%20Assistant%20Public%20Defender,%20Director%20of%20Juvenile%20Delinquency%20Defense,%20Office%20of%20Chief%20Public%20Defender-TMY.PDF

[6] Ibid.

[7] See CGS 146b-141. The bill at hand would amend this provision of CGS to require that sentences be extended if no less restrictive alternative to commitment exists.

Connecticut Voices for Children supports the provision in HB 6399 (Section 3), which prohibits the admission of statements made by juveniles without their parents present in all cases, including those where the youth are tried as adults. Section 3 will help to protect juvenile defendants from self-incrimination, and eliminate a perverse incentive for law enforcement to violate their rights.

Connecticut already prohibits the admission of statements made by a child without a parent or guardian present when the child is tried as a juvenile.[8] This prohibition was originally created to ensure that minors, who are not allowed to waive their rights or make legal decisions without parental consent, can seek the counsel of their parents before talking to the police. It is a protection against self-incrimination that recognizes that children are less capable than adults of understanding the consequences of their actions, and are more vulnerable to coercion and false confession.[9] This same logic applies regardless of whether a child is being tried as a juvenile or as an adult. Youth who are tried as adults are still youth, regardless of the nature of the crime they have committed, and are no more likely to understand the consequences of waiving their right to remain silent and talking to a police officer than if they had been tried as a juvenile.

In fact, Connecticut's current law creates a perverse incentive for law-enforcement to ignore the protections afforded to juveniles. Since statements are taken prior to a trial, and law enforcement officials do not know whether a juvenile trial will be transferred to adult court when taking statements, they should act on the presumption that any youth being tried will be tried as a juvenile, and respect the youth's right to submit a statement with a parent or guardian present. However, if there exists the possibility that a statement made without a parent present could be admissible if the case is moved to adult criminal court, then a law enforcement officer has an incentive to try to acquire a statement from the youth without his or her parents present, in violation of the youth's rights. Prohibiting the admission of statements made without a parent or guardian present in all hearings will eliminate this conflict of interest and ensure that children are tried in a developmentally appropriate matter that respects their right not to incriminate themselves.

4. <u>Automatic Erasure for Juvenile Delinquency</u>

Connecticut Voices for Children supports Section 4 of HB 6399, which requires the automatic erasure of all juvenile offenders' court records after two years in cases where the juvenile was convicted of a delinquent act. Section 4 ensures that the rehabilitative function of the juvenile justice system is not undermined by the stigma of an unnecessary criminal record.

Connecticut already erases the records of juveniles convicted of a delinquent act after two years when the convicted individual submits a request to have his or her record erased.[10] These requests are nearly always granted. However, because many former delinquents are unaware that they can have their records wiped clean, they often do not apply. This creates socioeconomic disparities between those juvenile offenders who do and do not have their records erased,

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[8] See, CGS 46b-137

[9] See, Amicus Brief of the American Psychological Association in *Roper v. Simmons*, July 19th, 2004. In Roper v. Simmons, the Supreme Court held that sentencing a juvenile to death constitutes cruel and unusual punishment, because juveniles are less culpable for their actions. Amicus brief available at http://www.apa.org/about/offices/ogc/amicus/roper.aspx.

[10] See, CGS 46b-146.

disparities that arise irrespective of the nature of the crime committed, or the extent to which the former offender has managed to get his or her life back on-track.

Allowing Juvenile Court records to be erased is an important part of the rehabilitative function of the Juvenile Court. A history of delinquency carries a stigma that can force former juvenile offenders to face discrimination, and can drive them back to a life of crime. The proposed statutory change does not change erasure procedures for juveniles convicted of serious offenses. Such juveniles will still have to wait four years and petition the court for erasure. Additionally, it would only allow for the erasure of records for individuals who have gone two years without any additional convictions. These young men and women who have stayed out of trouble should not face unnecessary stigma merely because they did not overcome a procedural hurdle. Automatically erasing the records of all former juvenile offenders convicted of a delinquent act will help to ensure that all youth can benefit equally from the rehabilitative function of the Juvenile Court.

Thank you for this opportunity to testify in opposition to H.B. 6399. Please feel free to contact us if you need further information.